

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
JUN 16 1997

Employer Identification Number: [REDACTED]
Key District: [REDACTED]
Form: 1120
Tax Years: [REDACTED] and subsequent years

Dear Applicant:

This letter constitutes a final adverse ruling with respect to your claim of exemption from federal income taxation under sections 501(c)(9) and 501(c)(6) of the Internal Revenue Code.

We make our ruling for the following reason(s):

You do not qualify for exemption as an organization described in section 501(c)(9) of the Code because you provide benefits to employees that are not life, sick, or accident benefits, and are not similar to life, sick, or accident benefits within the meaning of section 1.501(c)(9)-3 of the Income Tax Regulations. Further, upon termination your assets will inure to the benefit of your contributing employers.

You do not qualify for exemption as an organization described in section 501(c)(6) of the Code because you provide particular services for your members as prohibited by section 1.501(c)(6)-1 of the regulations. Further your purpose is to engage in a regular business of a kind ordinarily carried on for profit.

The Code and the regulations issued thereunder require that you file federal income tax returns. Based upon the financial information that you furnished, you should file returns on the form and for the tax years indicated above within 30 days from the date of this letter with your key District Director for exempt organization matters, shown above, unless you request and your key District Director grants an extension of time to file the returns. You should file returns for later tax years with the appropriate service center indicated in the instructions for those returns.

[REDACTED]

If you have any questions concerning the reasons for this ruling, please contact the person whose name and telephone number appear in the heading of this letter. You should address questions concerning the filing of returns to your Key District Director.

Sincerely,

(signed) [REDACTED]

[REDACTED]
Director, Exempt Organizations
Division

cc: [REDACTED]

cc: [REDACTED]

cc: [REDACTED]

[REDACTED]

EIN: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NOV 26 1996

Dear Applicant:

This refers to your application for recognition of exemption from federal income tax as an organization described in section 501(c)(9) of the Internal Revenue Code.

Facts:

The information shows that you were incorporated on [REDACTED], to establish and operate a program of self-insurance for electric membership cooperatives.

Your Articles and By-Laws provide that your members shall consist of electric membership cooperatives organized under chapter [REDACTED] of the [REDACTED] Code. Your governing board is elected by your members. Also, your Articles and By-Laws provide that upon dissolution all of your assets will be paid to members. The information furnished reflects that all of your member electric membership cooperatives are recognized as exempt from federal income tax under section 501(c)(12) of the Code.

The information furnished shows that your sole purpose is to provide workers compensation benefits to all employees of electric membership cooperatives organized under chapter [REDACTED] of the [REDACTED] Code. Further, the employee census you submitted reflects that all of the [REDACTED] employees of the electric membership cooperatives are covered by your benefit plan.

You state that you currently provide benefits for work related accidents and injuries to the employees of the electric membership cooperatives. In [REDACTED], you and your members entered into an Indemnity Agreement. That Agreement states that each of your members is subject to the terms and conditions of the [REDACTED] Workers' Compensation Act (hereafter the Act). Further, under the Agreement, you are required to pay the benefits or awards your members are required to pay to their employees by the Act.

You indicate that ~~it is determined~~ that you do not qualify for recognition of exemption under section 501(c)(9) of the Code, that, in the alternative, you request consideration for exemption under section 501(c)(6) of the Code.

The issue in this case is whether you are providing employer benefits instead of employee benefits.

Law:

Section 501(c)(9) of the Code provides for the exemption from Federal income tax of voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 501(c)(6) of the Code provides for the exemption from Federal income tax of business leagues not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 4976(a) of the Code provides, in effect, that an employer who maintains a welfare benefit fund will be assessed a tax equal to 100 per cent of any disqualified benefit.

Section 4976(b)(1)(C) of the Code, in relevant part, defines the term "disqualified benefit" to mean any portion of a welfare benefit fund reverting to the benefit of the employer.

Section 302(c)(5) of the Labor Management Relations Act (LMRA) allows for benefit payments which are compensation for injuries or illness resulting from occupational activity or insurance to provide these payments. These benefits are commonly known as workers' compensation payments and are those provided by law for compensation for loss resulting from injury, disability, or death of workers due to industrial casualty, accidents, or disease.

Section 1.501(c)(9)-1 of the Income Tax Regulations provides that for an organization to be described in section 501(c)(9) of the Code, an organization must meet all of the following requirements:

- (a) The organization is an employees' association,
- (b) Membership in the association is voluntary,

- (c) The organization provides for the payment of life, sick, accident, or other benefits to its members or their dependents or designated beneficiaries, and substantially all of its operations are in furtherance of providing such benefits, and
- (d) No part of the net earnings of the organization inures, other than by payment of the benefits referred to in paragraph (c) of this section, to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-3(d) of the regulations defines 'other benefits' as including:

only benefits that are similar to life, sick, or accident benefits. A benefit is similar to a life, sick, or accident benefit if--

(1) It is intended to safeguard or improve the health of a member or a member's dependents, or

(2) It protects against a contingency that interrupts or impairs a member's earning power.

Section 1.501(c)(9)-3(e) of the regulations states, that "[e]xcept to the extent otherwise provided in these regulations, as amended from time to time, 'other benefits' also includes any benefit provided in the manner permitted by paragraphs (5) et seq. of section 302(c) of the Labor Management Relations Act of 1947.

Section 1.501(c)(9)-4(a) of the regulations provides that "[n]o part of the net earnings of an employees' association may inure to the benefit of a private shareholder or individual other than through the payment of benefits permitted by section 1.501(c)(9)-3 [of the regulations]...."

Section 1.501(c)(6)-1 of the regulations defines a business league as an association of persons having some common business interest, the purpose of which is to promote such common interest. Its activities should be directed towards the improvement of business conditions in one or more lines of business as distinguished from the performance of particular services for individual persons.

In Rev. Rul. 74-18, 1974-1 C.B. 139, the Service held that since the employees of the corporation were already entitled under state statute to the payment of workmen's compensation benefits, the formation of the association did not result in the receipt of any additional employee benefits. The association

merely ensures the discharge of an obligation already imposed by statute upon the corporation. Accordingly, the association does not qualify for exemption from Federal income tax under section 501(c)(9) of the Code.

In Rev. Rul. 74-81, 1974-1 C.B. 135 the Service held that by providing group workmen's compensation insurance for its members, the organization relieves the members of obtaining this insurance on an individual basis, resulting in a convenience in the conduct of their businesses. Therefore, the organization is rendering particular services for individual persons as distinguished from the improvement of business conditions in the contracting and related industries generally. Accordingly, the Service concluded that the organization did not qualify for exemption from Federal income tax under section 501(c)(6) of the Code.

Rationale:

In Rev. Rul. 74-18, supra, the Service concluded that a fund established by an employer to provide workers' compensation benefits required by state law did not qualify for exemption under section 501(c)(9) of the Code. Specifically, the Service concluded that "since the employees of the corporation were already entitled under state statute to the payment of workmen's compensation benefits, the formation of the fund did not result in the receipt of any additional employee benefits. The fund merely ensured the discharge of an obligation already imposed by the statute upon the employer.

The essence of the ruling in Rev. Rul. 74-18, supra, is that the subject organization was not a section 501(c)(9) VEBA because, in effect, it was providing an employer benefit, rather than an employee benefit. However, this ruling has, in effect, been modified, with respect to VEBAs created under a collective bargained agreement. The reason for this difference in treatment, is that a collectively bargained benefit is an employee benefit rather than being an employer benefit as in Rev. Rul. 74-18, supra.

Therefore, the Service believes that a VEBA, formed pursuant to a collective bargained agreement, that provides workers' compensation benefits, qualifies for exemption under section 501(c)(9) of the Code.

Since workers' compensation benefits are a type of benefit which may be provided by a section 501(c)(9) VEBA, the central question is whether the provision of such benefits in your case is consistent with the basic principles of exemption under section 501(c)(9). The information furnished does not reflect that the workers' compensation benefits you fund were

collectively bargained. Thus, you do not meet the exception to the holding in Rev. Rul. 74-18, supra.

Moreover, the information furnished reflects that your members, the electric membership cooperatives, are subject to the terms and conditions of the Act and that you are required to pay the benefits or awards they are required to pay to their employees by the Act. Therefore, we conclude that the workers' compensation benefits you fund are benefits for the employer, the electric membership cooperatives, and not benefits for the employees of the electric membership cooperatives. Accordingly, we conclude that you are like the subject organization of Rev. Rul. 74-18, supra.

Even if we concluded that the workers' compensation benefits you fund are consistent with exemption under section 501(c)(9) of the Code, you would still not qualify for exemption under section 501(c)(9), because Article ■ of your By-Laws provide that your members are the electric membership cooperatives, rather than the employees of the electric membership cooperatives, thus you are not an association of employees within the meaning of section 1.501(c)(9)-1 of the regulations.

Even if we concluded that you are an association of employees within the meaning of section 1.501(c)(9)-1 of the regulations, you would still not qualify for exemption under section 501(c)(9) of the Code, because Article ■ of your By-Laws provide that your assets will be distributed to your members in violation of section 4976(b)(1)(C) of the Code. Moreover, your assets will inure to your member-employers in contravention of section 1.501(c)(9)-4(a) of the regulations.

Because your members are the electric membership cooperatives, rather than the employees of the electric membership cooperatives, we conclude that you are formed more like the organization that is the subject of Rev. Rul. 74-81, supra.

Based on the information furnished, we conclude that by providing group workmen's compensation insurance for your members, you are relieving your members of obtaining this insurance on an individual basis, thus resulting in a convenience in the conduct of their businesses. Therefore, we conclude that you are rendering particular services for individual persons as distinguished from the improvement of business conditions in one or more lines of business within the meaning of section 1.501(c)(6)-1 of the regulations. Accordingly, we conclude that you do not qualify for exemption under section 501(c)(6) of the Code.

Conclusions:

Therefore, we conclude that you are not organized or operated like an employee benefit association described in section 501(c)(9) of the Code, or like a business league described in section 501(c)(6) of the Code.

In summary, (1) you are not an association of employees within the meaning of section 1.501(c)(9)-1 of the regulations; (2) your assets inure to the employer-members on dissolution in violation of the inurement proscription under section 1.501(c)(9)-4(a) of the regulations; (3) you are funding employer rather than employee benefits and are like the subject organization of Rev. Rul. 74-18, supra; (4) you are rendering particular services for members in contravention of section 1.501(c)(6)-1 of the regulations.

Therefore, based on the above, we conclude that you do not qualify for recognition of exemption from federal income tax under either section 501(c)(9), or section 501(c)(6) of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days of the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the Southeast key District Director in Baltimore, Maryland. Thereafter, any question about your federal income status should be addressed to that office.

Sincerely yours,

Chief, Exempt Organizations
Rulings Branch 3

cc: [REDACTED]
Attn: EO Group